

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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JUL 15 1996

**In the Matter of**

**Amendment of the Commission's Regulatory  
Policies to Allow Non-U.S.-Licensed Space  
Stations to Provide Domestic and International  
Satellite Service in the United States**

**IB Docket No. 96-111**

**and**

**Amendment of Section 25.131 of the Commission's  
Rules and Regulations to Eliminate the Licensing  
Requirement for Certain International  
Receive-Only Earth Stations**

**CC Docket No. 93-23  
RM-7931**

**and**

**COMMUNICATIONS SATELLITE CORPORATION  
Request for waiver of section 25.131(j)(1) of  
the Commission's Rules As It Applies to  
Services Provided via the Intelsat K Satellite**

**File No. ISP-92-007**

**COMMENTS OF GENERAL INSTRUMENT CORPORATION**

General Instrument Corporation ("GI") hereby submits these comments in response to the Notice of Proposed Rulemaking ("Notice"), IB Docket No. 96-11, CC Docket No. 93-23, RM-7931, File No. ISP-92-007 released May 14, 1996. GI is a leading developer and manufacturer of system solutions for the secure and interactive delivery of video, voice and data, including satellite technologies.

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## Summary of Position

In this Notice, the Commission requests comments on a proposed framework for evaluating applications by other countries for authority to provide satellite-delivered services in the U.S. GI's comments focus on the proposed effective competition test, specifically on barriers to entry by U.S. firms. GI generally supports the use of a market entry barrier test for determining whether a market is potentially or effectively competitive *with the caveat that such tests may not capture the dynamic entrepreneurial nature of certain high technology markets where technology standards are an issue*. GI alerts the Commission to one particular barrier to competition, namely, current policy distinctions between the U.S. and other countries with regard to technical standards. Differing public policies with respect to technical standards present a significant threat to the ability of U.S. firms seeking to compete in the global satellite market as well as in other world markets.

GI agrees generally with the proposal set forth in this Notice that U.S. users will benefit from greater access to services provided over non-U.S. satellites. By encouraging a more open policy with regard to satellite-delivered services, the U.S. takes an important first step in opening its borders to competition and in doing so encourages other countries to do the same. Consumers will ultimately be the beneficiaries of this important first step due to more service choices and both price and quality competition. However, since new space on U.S. satellites is today effectively exhausted for certain orbital locations, such as for DBS, the only possibility of *supply-increasing and price-decreasing competition* is from non-U.S. satellites. Therefore, it is of concern

whether an effective competition test, such as the one proposed in the Notice, would capture this supply problem.

### **Use of a Market Barrier Test Is Appropriate**

The Commission's proposed framework would allow other countries to provide satellite-delivered services to, from, or within the U.S. to the extent that foreign markets allow similar opportunity for U.S. satellite systems to provide analogous services. The U.S. would regulate this activity by licensing earth stations which operate with non-U.S. satellite systems. The licensing process would include an effective competition test ("ECO-Sat" test) which would evaluate both home and route markets of the non-U.S. satellite by assessing what barriers to entry, if any, exist to U.S. satellite systems seeking to provide analogous service. Both *de jure* (legal) and *de facto* (other) barriers as well as public interest considerations would be included in the evaluation. The Commission's proposed framework would require all non-U.S. satellite systems serving the U.S. to comply with the technical and reporting requirements currently imposed on U.S. satellite systems. The Commission further proposes a service-by-service evaluation, splitting the markets into DTH (or DBS), FSS and MSS delivered services.

GI supports the approach proposed in the Notice to use an evaluation of *de jure* and *de facto* barriers for determining effective competition. This approach is preferred on several grounds: in newly evolving markets where competition has not yet occurred, other approaches which rely on market

concentration or market share would not work. Using market entry barriers for evaluating potential competition is also preferred in nascent, developing markets where the demand for these services is so low that only one or very few competitors can be sustained.

With regard to segmenting the market into DTH, FSS and MSS services, the proposed framework suggests that non-U.S. satellite operators or content providers would be permitted to offer in the U.S. the same type of service available to the U.S. provider in that foreign country. GI agrees that it may be necessary to review this approach periodically as services evolve overtime.<sup>1</sup>

### **The Absence of a U.S. Policy on Technical Standards Is a Market Barrier to U.S. Firms**

The Notice seeks comment on *de facto* constraints on the provision of service by U.S. satellite systems to deny them competitive opportunities in the relevant foreign market.<sup>2</sup> The Notice states that elimination of *de facto* barriers is critical for the development of an effectively competitive market, particularly in countries where one system is dominant.<sup>3</sup> GI recommends that the Commission include an assessment of the impact of approved technical standards on the ability of U.S. firms to compete globally. Present European standards, while not a *facially de jure* barrier have the intended effect of erecting a barrier to U.S. entry into foreign markets.

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<sup>1</sup> Notice at para. 34.

<sup>2</sup> Notice at para. 40.

<sup>3</sup> *Ibid.*

The threat to U.S. competitiveness in the global marketplace is apparent in reviewing the development and adoption of technical standards in the U.S. *versus* the development and adoption of *different* standards in Europe. Little attention is focused on the impact of technical standards on the ability of U.S. firms to compete as indicated by the lack of reference to this issue in this Notice. Foreign competitors have been successful in promoting their technologies by pointing to widely-adopted and approved European-based standards. The lack of similarly approved U.S. standards is today hampering U.S. firms to compete with their European counterparts. The continuing delay in establishing U.S. standards has turned this issue into a veritable trade barrier to U.S. firms wishing to compete in foreign markets.

An example of the impact of this problem is digital HDTV. In comments filed on July 11, 1996 in the FCC's Fifth Further Notice of Proposed Rulemaking, FCC 96-207,<sup>4</sup> GI explained that although digital television was invented in the U.S., by U.S. companies, Europeans have been quick to advance a competing standard, called digital video broadcasting ("DVB"). Although inferior in several respects to the proposed North American broadcast standard now before the Commission, DVB has already been adopted by the European Commission, thereby establishing it as a competitor to the proposed North American standard:

".....At stake are the markets of Latin America and Asia and the ability of companies advancing the North American standard to make inroads into those markets. At risk is the possibility that the North

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<sup>4</sup> Comments of General Instrument Corporation, *Fifth Further Notice of Proposed Rulemaking in the Matter of Advanced Television Systems and Their Impact Upon Existing Broadcast Service*, MM Docket No. 87-268, FCC 96-207, filed July 11, 1996.

American standard could be isolated and American technology and services blocked or hindered in other markets.

At risk also are policies which seek to generate interoperability and compatibility. While identical standards across all distribution media are neither necessary nor wise (such as when different modulation methods are optimal for different media), the ATSC broadcast standard provides a high degree of similarity with evolving standards for other media, including cable television, MMDS, and direct-to-home satellite services.....

Initial hopes that the European countries would work with the United States in the development of digital television have been dashed by the adoption of DVB. Clearly, Europe has once again chosen not to co-ordinate with the U.S. Europe has a long history of initiating standardization efforts in the area of television technology, including PAL and SECAM in the 1960s, and Eurocrypt, D2MAC, DMAC and HD-MAC in the 1980's. The *bona fide* interest in establishing open standards frequently coincides with the opportunity to promote European industrial interests..."<sup>5</sup>

GI recommended that the U.S. government help to ensure that the ATSC standard is finalized expeditiously and promoted throughout North America, South America and Asia. Specifically referencing the U.S. satellite market, GI noted in its comments that: "...U.S./Canadian co-operation has been a hallmark of the digital television process; the result has been a consensus North American broadcast standard. The choice of that standard by Canadian satellite interests

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<sup>5</sup> Ibid., pp. 10 - 11.

planning to permit Canadian DBS slots to serve U.S. consumers would be a valuable element in further solidifying the competitiveness of U.S. industry. The Commission should grant the pending license applications for this service, even as it proceeds expeditiously to finalize the ATSC standard for broadcast television. ”<sup>6</sup>

Further delay in adopting the ATSC standard will only guarantee the absence of U.S.-approved technical standards as a formidable barrier to U.S. firms seeking to compete globally. The Commission should act now to approve the ATSC standard, grant the pending license applications mentioned above and attribute the required degree of importance to the issue of technical standards policy in the current proceeding. In keeping with the pro-competitive policy outlined in this Notice, the Commission should act now to promote the adoption of North American standards in the U.S. and in other countries. Such action would work toward the elimination of a *de facto* barrier to competition against U.S. firms. Eliminating this barrier will help both U.S. consumers to benefit from additions to supply where the U.S. supply is now perfectly inelastic with respect to price, as well as help U.S. producers penetrate foreign markets.

### **Non-U.S. Satellites Should Be Used When Domestic Resources Are Unavailable**

GI generally agrees with the proposal set forth in this Notice that U.S. users will benefit from greater access to services provided over non-U.S. satellites. By encouraging a more open policy with regard to satellite-delivered

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<sup>6</sup> Ibid., p. 12.

services, the U.S. takes an important first step in opening its borders to competition and in doing so encourages other countries to do the same. Consumers will ultimately be the beneficiaries of this important first step due to more service choices and both price and quality competition. This is especially true in the current situation where space on U.S. satellites is exhausted. Non-U.S. satellite resources should be permitted to deliver services to U.S. consumers when resources are not available from domestic satellites to meet consumers' needs. One example is domestic DBS service. There currently is no space available from U.S. orbital locations to deliver DBS services into the U.S. from new competitors seeking to enter this market. In instances such as this, an evaluation of reciprocal trade barriers serves no purpose. Actually, it may send the wrong message resulting in net losses to U.S. consumers and producers. Thus, the public interest would be served by allowing non-U.S. satellites to provide these services without further delay.

## **Conclusion**

GI supports with the above noted caveats the proposed effective competition framework contained in the Notice which uses a market entry barrier approach. GI strongly recommends that the concerns it has raised be obviated by the Commission including in its evaluation an assessment of U.S. policy regarding technical standards and the impact on U.S. firms' ability to compete globally. GI agrees generally with the proposal set forth in this Notice that U.S. users will benefit from greater access to services provided over non-U.S. satellites. Consumers will ultimately be the beneficiaries with more service choices and both



price and quality competition especially in the present DBS market context where space on U.S. satellites is exhausted. As a result, it is GI's concern that an effective competition test alone, such as the one proposed in this Notice, would signal a policy that benefits consumers.

Respectfully submitted,

GENERAL INSTRUMENT CORPORATION

A handwritten signature in cursive script, reading "Christine G. Crafton".

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